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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc, III

Standards of Conduct

Docket No. RM2001-1

NOTICE OF PROPOSED RULEMAKING

(Issued February 7, 2001)

Currently, the Commission's Standards of Conduct [39 CFR Part 3000] contain a *de minimis* rule. The *de minimis* rule provides that security interests held by a Commission employee that are valued below a certain amount will receive a different level of scrutiny for conflicts of interest than security interests valued above the specified amount. The Commission invites the public to comment on its proposal to delete its *de minimis* rule.

Rationale for the proposed change. Currently, Rule 103(b) of the Commission's Standards of Conduct [39 CFR § 3000.735-103(b)] requires the Chairman of the Commission to determine an appropriate maximum limit on the value of an interest that a Commission employee may have in stocks, bonds, or other form of securities in any one entity. It authorizes the Chairman to specifically approve maintaining a security interest above the maximum limit, if he determines that the interest is not so substantial as to be likely to affect the integrity of the service that the employee provides to the Commission.

The Commission finds that this procedure for screening security holdings for potential conflicts of interest has become redundant under the Commission's current screening procedures. Furthermore, 5 CFR § 2640 contains *de minimis* exemptions from the conflict of interest rules that are intended to govern Federal agencies

generally. This regulation was promulgated by the Office of Government Ethics subsequent to the Commission's adoption of Rule 103(b). The Office of Government Ethics has advised the Commission that its generally applicable *de minimis* exemptions supercede Rule 103(b).

Original purpose of the de minimis rule. The Commission's Standards of Conduct prohibit its employees from having a financial interest in companies "whose interests may be significantly affected by rates of postage, fees for postal services, the classification of mail, or the operation of the Postal Service." Conversely, they allow Commission employees to have a financial interest in companies "whose use of the mail is merely an incidental or minor factor in the general conduct of its business." See 39 § CFR § 3000.735-103(a).

More than 25 years ago, the Commission's General Counsel set up internal guidelines for applying Rule 103 that used a three-part test to analyze financial conflicts of interest. Some interests were categorized as conflicts *per se*, others were categorized as non-conflicts *per se*, and those that remained required specific approval by the Chairman. See memo of General Counsel Crutchfield to the Commission staff dated December 26, 1973.

The rigorous financial reporting required by the Office of Government Ethics since 1989, as a practical matter, supercedes this three-part test involving *per se* categories. The OGE's rules now require that every agency individually analyze every asset held by a policy-making employee that is worth over \$1,000 for potential conflicts with that employee's official duties. For that reason, grouping assets into those that are regarded as conflicts *per se*, those that are regarded as *se non-conflicts per se*, and those that require individual analysis, no longer simplifies the evaluation of financial conflicts that the Commission must perform.

In ethics practice, assuming that financial interests do not present a potentially significant conflict if they are below a certain market value is known as a "de minimis" rule. Under current Rule 103(b), the Chairman must select the market value of financial interests that are to be considered *de minimis* for purposes of conflicts analysis.

The original rationale for the *de minimis* rule was that most companies are affected to some degree by postal services. Therefore, even where the Commission had already determined that postal activity is a minor part of a particular company's business, the Commission feared that a conflict could arise if an employee were to concentrate investments in a few such companies. See memo to the Commission from David Ruderman, dated July 13, 1993, at 3. Because the Commission now screens all investments worth more than \$1,000 for *per se* conflicts, it has routinely approved the holding of security interests that are above the *de minimis* amount. Accordingly, the screening procedure required by Rule 103(b) has become redundant.

Because the conflicts analysis that current Rule 103(b) requires has become redundant, and because it has been superceded by the *de minimis* rules of 5 USC § 2640 that apply to Federal agencies generally, the Commission proposes that current Rule 103(b) be deleted. Any public comment directed toward this proposal should be submitted within 30 days of the publication of this Notice in the Federal Register.

It is ordered:

1. Public comment on the Commission's proposal to delete paragraph (b) from current Rule 103 of its Standards of Conduct should be submitted within 30 days of the publication of this Notice in the *Federal Register*.
2. The Secretary is directed to cause this Notice of Proposed Rulemaking to appear in the *Federal Register*.

By the Commission.

(S E A L)


Margaret P. Crenshaw
Secretary